IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2007

CORAM

THE HON' BLE MR. JUSTICE S.J. MUKHOPADHAYA
&
THE HON'BLE MR. JUSTICE V. DHANAPALAN

W.A. Nos.766 & 983 of 1998

W.A. No.766 of 1998

The Tamil Nadu Highways &
Rural Work Employees' Cooperative Thrift
and Credit Society Limited
represented by its Special Officer
Bargadambal Theatre Compound
Pudukkottai - 622 001 Appellant/Petitioner.

vs.

1 The Presiding Officer
Labour Court
Tiruchirapalli

2 N. Ramadoss Respondents/Respondents.

W.A. No.983 of 1998

N. Ramadoss Appellant2nd Respondent

vs.

1 The Tamil Nadu Highways &
Rural Work Employees' Cooperative Thrift
and Credit Society Limited
represented by its Special Officer
Bargadambal Theatre Compound
Pudukkottai - 622 001

2 The Presiding Officer
Labour Cour
Tiruchirapalli Respondents/Petitioner/
1st Respondent.

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Writ Appeals filed under Clause 15 of the Letters Patent challenging the order dated 02.04.1998 passed by a Single Judge of this Court in W.P. No.15783 of 1995 Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorari to set aside the award passed by the first respondent in IO.No.27 of 1993 dated 27.7.95 and to quash the same.

For appellant in W.A. No.766 of 1998 & and 1st respondent in W.A. No.983 of 1998 — Mr. Vijay Narayan, Sr. Counsel for Mr. R. Parthiban

For 2nd respondent in W.A. No.766 of 1998 & and appellant in W.A. No.983 of 1998 — Mrs. A.V. Bharathi

COMMON JUDGMENT

V. DHANAPALAN, J.

W.A. No.766 of 1998 has been preferred by a Cooperative Thrift and Credit Society, challenging the order of a learned Single Judge of this Court in and by which, it was directed to pay its employee by name Ramadoss, his salary last drawn on the date of termination of service till the date of his superannuation, besides a lumpsum compensation of Rs.25,000/-.

2. W.A. No.983 of 1998 has been filed by the said Ramadoss challenging the same order of the learned Single Judge in and by which the order of the Labour Court directing his reinstatement was set aside.

3. Since both the appeals are arising out of the order of a learned Single Judge of this Court made in W.P. No.15783 of 1995, they are decided by way of this common judgment. For the sake of brevity, the Cooperative Thrift and Credit Society is referred to as "the Society" and the said Ramadoss is referred to as "the employee".

4. The facts which give rise to the present appeals are as follows:

The employee was working as an Assistant in the Society. On 23.05.1991, he was given a Charge Memo containing three charges all of which pertain to misappropriation of funds. A domestic enquiry was conducted wherein all the three charges leveled against him stood proved and as such, a notice was issued by the Society to the employee asking him to show cause as to why his services should not be terminated. Since there was no response either in person or by way of an explanation, the employee was terminated by the Society vide its order dated 30.07.1991.

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Aggrieved by the termination order passed by the Society and consequent upon the failure of conciliation proceedings, the employee filed a Claim Statement under Section 2-A(2) of the Industrial Disputes Act. The Labour Court, after determining the points for consideration, namely (1) whether the domestic enquiry was conducted in a fair and proper manner and (2) whether the non-employment of the employee is justifiable and after analyzing both forms of evidence on either side, decided the first point in favour of the Society and the second point in favour of the employee.

Questioning the validity of the order of the Labour Court in and by which the Society was directed to reinstate the employee with continuity of service and backwages, the Society filed W.P. No.15783 of 1995 before this Court and the learned Single Judge, while passing orders in the said writ petition, quashed the order of the Labour Court directing the Society to reinstate the employee and passed the following directions in para 21 of his order:

> "The last pay drawn by the second respondent on the date of the termination of the service i.e. 30.07.1991 shall be taken into account and the very same pay shall be taken into account for the future period, upto the superannuation period and the same amount may be paid to him.
>
> Apart from the salary calculated in the manner set forth above, a lumpsum compensation of Rs25,000/- should also be paid to him.
>
> The petitioner is directed to comply with the above-said directions within three months from the date of receipt of the order."

Challenging the order of the learned Single Judge in directing the Society as stated above, the Society has preferred W.A. No.766 of 1998. Similarly, questioning the order of the learned Single Judge in quashing the order of reinstatement made by the Labour Court, the employee has preferred W.A. No.983 of 1988.

5. Mr. Vijay Narayan, learned Senior Counsel arguing on the side of the Society would vehemently contend that the learned Single Judge, after holding that the employee had committed a series of misappropriation of funds and had completely lost the confidence reposed upon him by the employer, ought not to have given directions in para 21 of the order as extracted above, especially when the charges leveled against the employee are so grave in nature.

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6. In response, Mrs. Bharathi, learned counsel appearing on the side of the employee would contend that the learned Single Judge ought not to have modified the order of reinstatement with back-wages made by the Labour Court by ordering termination and compensation in lieu of the same, particularly when law is well-settled that the exercise of jurisdiction by the Labour Court under Section 11-A of the Industrial Disputes Act shall not be interfered with by the High Court, unless there is a grave error of law or illegality or other compelling reasons warranting such extraordinary interference. She would further contend that the order of the learned Single Judge in terminating the services of the employee for misappropriation of meagre amounts is shockingly disproportionate.

7. Heard both sides.

8. The points for consideration in this batch of two appeals are whether the Labour Court is correct in its order of reinstatement of the employee and that too, with back-wages and whether the learned Single Judge is correct in ordering compensation in lieu of termination.

9. It is not in dispute that the three charges which were leveled against the employee stood proved at the stage of domestic enquiry and consequently, the employee was terminated by the Society after issuance of a show-cause notice for which there was no reply from him. The Labour Court too, which is the appropriate forum to appreciate evidence, after an analysis of both oral and documentary evidence, has given categorical findings to the effect that all the three charges stood proved. In this context, it is useful to refer to the additional typed set of papers filed by the counsel for the Society which contains three letters written by the employee to the Society. A perusal of the same would reveal that the employee has admitted his guilt and has tendered unconditional apology for his involvement in misappropriation and has also assured that he would not involve himself in such kinds of activities. Further, a reading of Ex.M.21 makes it clear that the employee himself was prepared to pay a sum of Rs.310/- to one Gandhi and he has further stated that the same could be deducted from his salary. On one occasion, the petitioner has in fact admitted that he was in possession of the amount of some members and that he would credit the amounts to their account.

10. With regard to the conduct of enquiry, there was no allegation before the Enquiry Officer that evidence was not properly recorded and only after the domestic enquiry, such an allegation appears to have been made. Since the petitioner has attested the entire domestic enquiry proceedings, it has to be naturally concluded that the domestic enquiry was conducted in a fair and proper manner. Further, it is relevant to point out that it is not that the employee was involved in misappropriation only once. In fact, he had been involved in a series of misappropriation i.e. on three occasions. On the first occasion, he was involved in misappropriation of Rs.1,330/-. The second charge is that he had misappropriated a sum of Rs.310/- and on the third occasion, the

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amount of misappropriation was Rs.1,400/-. As already stated by us, the three charges leveled against the employee have been proved beyond any reasonable doubt. Though the amounts said to be misappropriated by the employee are only meagre, what is to be weighed is his honesty and integrity. When the fact remains that all the three charges stand proved and the Labour Court also was convinced that the employee was involved in misappropriation on three occasions, this Bench is of the considered opinion that no iota of sympathy need be shown to the employee either to reinstate him or to compensate him in lieu of his termination for the reason that once an employee gets into the bad books of his employer, it may not be advisable on the part of the employer to continue the employee in service.

11. The above opinion of ours is supported by a very recent ruling of the Supreme Court reported in (2007) 1 SCC 222 in the matter of A.P.S.R.T.C vs. Raghuda Siva Sankar Prasad and the relevant portions run as under:

> "20. The learned Judges of the High Court have also failed to appreciate that once an employee has lost the confidence of the employer, it would not be safe and in the interest of the Corporation to continue the employee in the service. The punishment, imposed by the Management in the facts and circumstances of the case, is not disproportionate and that the punishment of removal from service is just and reasonable and proportionate to the proved misconduct.
>
> 22. . . . It is also not open to the Tribunal and Courts to substitute their subjective opinion in place of the one arrived at the domestic tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order or reinstatement passed by the Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. . ."
>
> 23. . . . As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters.

12. Thus, in view of the fact that the charges leveled against the employee stand proved and the employee also has admitted his guilt as seen from the letters written by him to the Society and taking cognizance of

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the recent ruling of the Supreme Court (supra) which goes to say that no sympathy or generosity need be shown to the punishment of removal, we hold that the learned Single Judge has rightly set aside the award of the Labour Court in ordering reinstatement of the employee. At the same time, we also hold that the learned Single Judge is not correct in ordering compensation in lieu of termination, especially after having found that the confidence reposed upon him by the Society was completely lost and that it is not advisable on the part of the Society to permit him to continue in service as it would demoralize the morale in the Society. Further, as the reason that the three proved charges of misappropriation against the employee are undisputedly grave in nature, they do not warrant any sign of sympathy or generosity, as held by the Supreme Court in its decision referred to above.

For the afore-mentioned reasons, W.A. No.766 of 1998 preferred by the Society, challenging the directions of the learned Single Judge in para 21 of the order, is allowed and W.A. No.983 of 1998 preferred by the employee, questioning the order of the learned Single Judge in quashing the direction of his reinstatement passed by the Labour Court, is dismissed. However, there is no order as to costs in respect of both the appeals.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cad

To

The Presiding Officer
Labour Court
Tiruchirapalli
+ 1 CC To Mr. R.Parthiban, Advocate SR NO.20242
+ 1 CC To Mr. A.V.Bharathi, Advocate SR NO.20135

W.A. Nos.766 & 983 of 1998

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